

THOMAS L. PELLETT, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:07CV1683 CDP
)
U.S. BANK PENSION PLAN,)
)
Defendant.)

Plaintiffs have brought suit under the Employee Retirement Income Security Act (ERISA), alleging that the defendant has miscalculated certain balances in assessing the value of plaintiffs' retirement accounts. Defendants have moved to stay this action pending the Eighth Circuit's ruling in *Sunder v. U.S. Bank Pension Plan*, No. 07-3485 (8th Cir. filed Oct. 29, 2007).


Defendants argue that this case should be stayed because the forthcoming decision in *Sunder* will have a substantial bearing on the manner in which this case proceeds. As defendants note, the retirement plan at issue in *Sunder* is the same one as in this case. In fact, the same attorneys who argued *Sunder* in the district court are representing the parties in this current suit. The only difference seems to be that the plaintiffs here are different plan participants than in *Sunder*.

Though the Eighth Circuit's ruling in *Sunder* will likely have a significant impact on this case, I am not convinced that this case should be stayed at this time. The defendant has filed an answer, but no Rule 16 Conference has been held, and no initial disclosures have been made. The plaintiffs in this case have chosen to bring suit at this time, and should be allowed to seek the relief to which they feel they are entitled. There is no compelling reason to prevent discovery from going forward.

Were there a dispositive motion currently pending in this case, my analysis might be different. However at this early stage of litigation, I see no justification for putting this case on hold. I will therefore deny the defendant's motion to stay. This case will be set for a Rule 16 Conference by separate Order.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to stay [#7] is
DENIED.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 10th day of December, 2007.